

D-7800
ADM 1.10

MEMORANDUM

To: Regional Director, PN, MP, LC, UC, GP
Attention: PN-3700, PN-3702, MP-820, LC-3100, LC-3103,
UC-440, GP-3800
Area Manager, Phoenix, AZ
Attention: PxAO-8200, PxAO-8300
Director, Administrative Service Center
Attention: D-2940
Director, Management Services
Attention: D-7800, D-7810

From: Linda Waring Wilson
Manager, Acquisition and Assistance Management Services

Subject: Reclamation Acquisition Regulation ((RAR) Revision
Project Electronic Transmittal No 97-01, Supplement 5

1. Purpose: To transmit revisions to the RAR.
2. Effective date: September 22, 1997.
3. Expiration date: In effect until revised.
4. Background: This memorandum (and its supplements) is used to issue final acquisition regulation revisions during fiscal year 1997. The attached RAR changes are made to effect a myriad of substantive and editorial changes, perhaps the most significant of which implements a new procedure for independent review of agency protests.

Draft revisions were issued electronically for comment on August 8th. Several comments were received which resulted in improvement to the final product. They are discussed below. We would, as always, like to thank all commenters for their in-depth review of the draft changes.

a. Comment on SUBPART WBR 1401.70: If you are going to renumber the contents on the theory that all of this coverage falls under DIAR SUBPART 1401.70 rather than some of it being supplementary coverage for which there is no counterpart in the FAR or DIAR, then you should change the title of WBR 1401.7001-4 from "Acquisition and assistance management reviews

(AAMR's)" to "Acquisition performance measurement systems" to correspond with the DIAR.

Response: We have made the suggested change.

b. Comment on WBR 1433.103(a): You should add "or his/her designee" after "BPC".

Response: We have made the suggested change.

c. Comment on WBR 1433.103(a): This is somewhat confusing, as written. In order to clarify what this is all about, you might want to lead into this with something like, "Pursuant to FAR 1433.103(d)(4), an interested party may request independent review of its protest at a level higher than the contracting officer, which shall be the BPC."

Response: We have made the suggested change (along with the change resulting from the previous comment).

d. Comment on WBR 1433.103(b): FAR 33.103(g) provides that Agencies shall make their best efforts to resolve agency protests within 35 days after the protest is filed. Assuming the intent of WBR 1433.103(b) is to equate "resolve" with "Within 35 days after receipt...the CO or BPC shall issue a written decision," so be it. However, if the 35-day suspense is a mistaken interpretation of the FAR requirement, I'd recommend incorporation of similar language to the FAR, if necessary. Things are time sensitive enough as it is now. Wouldn't you agree?

Response: The 35-day standard was incorporated into the RAR by the ET 97-01, Supplement 4, based on the theory that agency protests are typically resolved well within this timeframe. The very first such protest received after the issuance of Supplement 4 (that we are aware of) defeated this assumption by presenting an extremely problematic scenario of trust territorial legal and political considerations. In this case, the contracting officer was hard pressed to respond to the protest within the 35-day mandate. Therefore, we agree with the comment and have changed the coverage to correspond with the FAR's best effort standard.

e. Comment on WBR 1433.103(b): Suggest adding a clarifier that the BPC is only involved in rendering a decision if the interested party has invoked the process described within WBR 1433.103(a). Otherwise, it looks as though the BPC can arbitrarily step in and render a decision in lieu of the contracting officer, no matter what the situation.

Response: We have made the suggested change.

f. Comment on WBR 1433.103(b) (made indirectly within the context of a comment on WBR 1452.233-80 discussed below): Does this confuse the content of DIAR 1433.103 regarding the appeal of a protest denied by the CO?

Response: We have changed the coverage to provide that, in addition to the requirements of DIAR 1433.103, when a protest is denied by the CO, the decision shall advise the protester that

the decision may be appealed to the BPC and that any such appeal must include a copy of the CO's protest decision.

g. Comment on WBR 1433.210-80(b): Suggest changing the wording in the interest of clarity to, "D-8160 shall review the claim within 30 days of receipt and provide a proposed listing of actions and time schedule necessary to complete its technical analysis or to provide assistance.

Response: We have made the suggested change.

h. Comment on WBR 1452.233-80: FAR 52.233-2, Service of Protest does not address the issue of independent review by the BPC, nor does it identify the BPC as the contracting officer. If the intent is to give bidders/offerors the opportunity to seek 1) a decision by the contracting officer or the BPC without the CO's decision on the Agency protest and/or 2) provide an appeal of the CO's decision via the BPC, I believe the proposed clause at WBR 1452.233-80 should so clearly and specifically state same.

Response: We have made the suggested change. With respect to the Service of Protest provision, we have advised PAM of the anomaly and suggested that the provision be modified, either in the FAR or by DIAR deviation, to include coverage on service of protest on the level above the contracting officer if that option is chosen pursuant to agency procedures.

5. Explanation of changes:

a. PART WBR 1401, TABLE OF CONTENTS, is changed to reflect the renumbering of the contents of SUBPART WBR 1401.70 -- ACQUISITION REVIEWS.

b. SUBPART 1401.70 is renumbered.

c. An editorial change is made to WBR 1409.506.

d. PART WBR 1411, TABLE OF CONTENTS, is changed to reflect the new SUBPART WBR 1411.2, USING AND MAINTAINING REQUIREMENTS DOCUMENTS.

e. WBR 1411.2 is added to provide a prescription for the new clause at WBR 1452-211.81, Effective Dates of Referenced Specifications and Standards.

f. WBR 1411.502 is changed to correct out-of-date references.

g. PART WBR 1428, TABLE OF CONTENTS, is changed to correspond with the revisions described in the next paragraph.

h. Titles of SUBPART WBR 1428.1 and SUBPART WBR 1428.2 are revised to correspond with current FAR coverage resulting from FAC 97-01.

- i. The prescription at WBR 1431.280 is revised.
- j. PART WBR 1433, TABLE OF CONTENTS, is changed to reflect the new WBR 1433.106.
- k. WBR 1433.103 is revised to provide for independent review of agency protests.
- l. WBR 1433.106 is added to provide a prescription for the new provision at WBR 1452.233-80, Agency Procurement Protests.
- m. WBR 1433.210-80(b) is revised for clarity.
- n. WBR 1433.215-80 is changed to reflect renumbered provisions.
- o. WBR 1436.508-80(b) is changed to correct an out-of-date reference.
- p. PART WBR 1452, TABLE OF CONTENTS, is revised to reflect the incorporation of two new clauses and the concomitant renumbering of two previously existing clauses as described below.
- q. WBR 1452.211-70 is changed to correct an out-of-date reference in the introductory paragraph.
- r. WBR 1452.211-81, Effective Dates of Referenced Specifications and Standards, is added in accordance with FAR 11.201.
- s. An editorial change is made to WBR 1452.215-80.
- t. WBR 1452.223-81 is revised to delete reference to amendments or revisions to the RSHS manual on the date of the solicitation.
- u. WBR 1452.228-82 and WBR 1452.228-83 are revised to correct out-of-date references in their introductory paragraphs.
- v. WBR 1452.231-80 is revised to incorporate coverage for educational institutions, State and local governments, and nonprofit organizations.
- w. WBR 1452.233-80, Agency Procurement Protests, is added.
- x. WBR 1452.233-81 is renumbered. (Previously numbered as WBR 1452.233-80.)
- y. WBR 1452.233-82 is renumbered. (Previously numbered as WBR 1452.233-81.)
- z. WBR 1452.236-80 is revised to correct an out-of-date reference in the introductory

paragraph.

aa. WBR 1453.303-1401-1 and WBR 1453.303-1401-2 are changed to delete the requirement for Procurement Integrity certification.

6. Action required:

a. Pen and ink changes: None.

b. Filing instructions. Replacement pages are contained in Attachment 1.

Remove Pages:

TOC, PART WBR 1401
PART WBR 1401
PART WBR 1409
TOC, PART WBR 1411
PART WBR 1411
TOC, PART WBR 1428
PART WBR 1428
PART WBR 1431
TOC, PART WBR 1433
PART WBR 1433
PART WBR 1436
TOC, PART WBR 1452
PART WBR 1452
WBR 1453.303-1401-1
WBR 1453.303-1401-2

Replace Pages:

TOC, PART WBR 1401
PART WBR 1401
PART WBR 1409
TOC, PART WBR 1411
PART WBR 1411
TOC, PART WBR 1428
PART WBR 1428
PART WBR 1431
TOC, PART WBR 1433
PART WBR 1433
PART WBR 1436
TOC, PART WBR 1452
PART WBR 1452
WBR 1453.303-1401-1
WBR 1453.303-1401-2

We would like to remind you that the entire RAR, including these revisions, is available in PDF format on our Internet homepage: <http://www.usbr.gov/aamsden/>.

7. Point of contact: Ron Simonich, (303)236-3750, extension 224.

Attachments

bc: D-7800 (8 copies w/attachment)
D-7810 (14 copies w/attachment)

WBR:RSimonich:jml:09/22/97:236-8040x222
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